

## BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO

September 16, 2009

<b>Meeting</b>	Chairman Poff called this meeting of the Tipp City Board of Zoning Appeals to order at 7:30 p.m.
<b>Roll Call</b>	Roll call showed the following Board Members present: Ron Poff, David Berrett, Stacy Wall, Katelyn Black, and John Borchers. Others in attendance: City Planner/Zoning Administrator Matthew Spring, and Board Secretary Kimberly Patterson.
<b>Absence</b>	There were none.
	Citizens attending the meeting: Don Knickerbocker, Paul Hoying, Darshan Vyas, and Asha Vyas.
<b>Board Minutes 8/19/09</b>	Chairman Poff asked for discussion. There being none, Mrs. Wall <b>moved to approve the August 19, 2009, meeting minutes as written</b> , seconded by Mr. Berrett. <b>Motion carried.</b> Ayes: Wall, Berrett, Poff, and Borchers. Nays: None. Ms. Black abstained from the vote.
<b>Chairman's Introduction</b>	Chairman Poff explained the guidelines and procedures for the meeting and public hearings. He advised the applicants that a decision of the Board could be appealed to City Council within 10 days. If the Board granted the applicant's request, the applicant may file the appropriate permits after the 10-day waiting period has expired.
<b>Citizen Comments</b>	There were none.
<b>Administration of Oath</b>	Mrs. Patterson, notary, swore in citizens wishing to speak to include Mr. Spring.
<b>New Business Case No. 06-09 Vyas Rear Yard Setback Variance Request</b>	<b>New Business</b> <b>A. Case No. 06-09: Paul Hoying – Hoying &amp; Hoying Builders, for Darshan and Asha Vyas, owners - 1021 Copperfield Lane, Tipp City - Lot: Inlot 3017</b> – The applicant requests a variance of 24' to the required rear yard setback of 50' noted in Code §154.041(C)(2)(b). <b>Present Zoning District:</b> R-1A – Suburban Residential Zoning District

**Zoning Code Section(s):** §154.041(C)(2)(b)

Mr. Spring stated that the applicant requested a variance of 24' to the required rear yard setback of 50' noted in Code §154.041(C)(2)(b) in conjunction with the construction of an addition to the primary structure located the single family residence at 1021 Copperfield Lane. If approved, the primary structure would be 26' from the northern (rear) property line.

Code §154.041(C)(2)(b) indicates:

(2) Yard requirements.

(b) Minimum rear yard depth: 50 feet.

Mr. Spring reviewed the following procedural requirements to be met by the Board.

Staff noted the Board of Zoning Appeals had jurisdiction in this case to grant the variance requested per Code §154.175(E)(1):

(E) *"The Board may grant variances only in the following instances and no others:*

1. *To permit any yard or setback less than a yard or setback required by the applicable regulations.*

Staff noted the following procedural requirements must be met regarding the granting of variances and noted in Section §154.175(C):

*"The Board shall make written findings of fact, based on the particular evidence presented to it, that each and every one of the following standards for a variance are met by the application:*

- (1) *The particular physical surroundings, shape, or topographical condition of the specific property would cause particular and extraordinary hardship to the owner if the literal provisions of the zoning code were followed;*
- (2) *The alleged hardship has not been created by the applicant for the variance after the adoption of the zoning code;*
- (3) *The granting of a variance will not be materially detrimental to the public health, safety, convenience, or general welfare or injurious to other property or improvements in the vicinity;*
- (4) *The granting of a variance will not constitute a grant of a special privilege, denied by this chapter to other property in the same zoning district, or permit a use not expressly allowed by this chapter, or permit a use prohibited expressly or by*

*implication to other property in the same district. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the granting of a variance."*

Staff also noted the requirement of Section §154.175(D), which states:

*"The Board shall further make a written finding that the reasons set forth in the application justify the granting of a variance, and that the variance is the minimum variance that will make possible the reasonable use of the property. When a variance is denied, a written statement shall set forth the reason(s) therefore."*

Mr. Spring stated that the originally conceived addition to the home could not be approved for two (2) reasons:

- (1) The existing required 50' rear yard setback (The proposed addition would encroach into the required 50' setback).
  - a. In order to remedy this issue, the applicant requested the variance before the Board this evening.
- (2) The presence of a 50' drainage easement abutting the rear (north) of the property line. This 50' drainage easement limited/prohibited any additional construction (Tipp City Code does not allow structures to be placed in easements).
  - a. In order to remedy this issue, the applicant would be required to seek a partial vacation of the existing 50' drainage easement and subsequent rerouting of the existing underground storm water pipes.
  - b. On July 14<sup>th</sup>, 2009, the Planning Board approved a replat of the existing parcel whereby a portion of an existing detention easement was vacated
  - c. On August 21<sup>st</sup>, 2009, the replat was recorded with Miami County
  - d. Subsequently and in the interim, the rerouting construction of the existing underground storm water pipes to place them into the new easement area was begun (a ± \$10,000 project).
- (B) The applicant was unintentionally unclear on the basic requirements and associated permit approval process needed to proceed with the construction of the addition. Consequently, the applicant has expended money on the pipe rerouting project without yet having the variance needed to begin the construction of the actual home addition. Although not required by Code, staff noted that

approval of the requested variance **prior** to the financial outlay for the pipe rerouting project would have been preferable.

Mr. Spring also noted the following regarding the case:

- The proposed addition would be  $\pm 24' \times 45.5'$  (1,092 sq. ft.).
- If the requested variance was granted and prior to the commencement of construction, the applicant would be required to obtain the required Zoning Compliance Permit and pay the associated fee of \$50. In addition, the applicant would need to obtain all other building permits (building, HVAC, electrical, etc.) from the Miami County Building Regulations Department.
- The proposed addition would not encroach into any of the current existing (newly replatted) easements.

Paul Hoying with Hoying & Hoying Builders 13120 McCartyville Road, Anna, Ohio. Mr. Hoying introduced Darshan and Asha Vyas, owners of 1021 Copperfield Lane. Mr. Hoying also introduced Mr. Don Knickerbocker from Knickerbocker Pools. Mr. Hoying stated that they were present to request the 24' variance to the rear yard setback. Mr. Hoying mentioned that Mr. Spring had presented the Board with a pretty detailed summary of the request. Mr. Hoying stated that Mr. & Mrs. Vyas had purchased the home in January of 2008, they had lived in Troy about ten years before that. The Vyas' had moved to Tipp City because of the excellent school systems and good neighborhood. The Vyas' had purchased the particular lot because of the location and wooded lot but mostly the back yard. The Vyas' had anticipated installing an indoor pool for their children and that was one of the reasons for purchasing the property. Mr. Hoying stated that when the project was first being investigated they had found out about the existing 50' drainage easement in the back of the yard which came within a foot and a half of the back of their foundation. Inside the easement was a 15" storm drainage tile that ran parallel to the back of the foundation at about 15' from the back of their home. Mr. Hoying also stated that the Vyas' did go before the Tipp City Planning Board and replat the property which was approved July 14<sup>th</sup> and recorded on the 21<sup>st</sup>. Shortly afterwards the Vyas' had instructed Bruns Contractors to do the install and to move the pipe and to take care of the project. Mr. Hoying also noted that this process was an extreme expense to the Vyas'. Shortly after August 17<sup>th</sup> Hoying & Hoying was awarded the contract to build the addition and on August 22<sup>nd</sup> Mr. Hoying had made the Zoning Compliance application and at that time was when they had found that there was a 50' rear yard setback on the lot. Mr. Hoying stated that it was a huge surprise to the Vyas', they had assumed that paying the addition to have all the plan work done and the replat done, and having the pipe moved that

they had taken care of all the permit issues that were required by Tipp City. In hindsight had the Vyas' known that the setback was there they would have gotten the variance request in before any of the file had been put in and any expense had been put forth the project. Mr. Hoying said that after they found out about the need for the variance, Mr. Spring helped them through the process and submitted that application in time to assure it was in before the Board this evening. Mr. Hoying stated that now that the easement had been changed and that the pipe had been changed that the variance request established an undo hardship on the owners of the property just due to the location of the easement. Therefore they are asking for the 24' variance to the required rear yard setback of 50'.

Mrs. Wall inquired as to where the storm pipe was moved to. Dr. Vyas, 1021 Copperfield Lane approached the dais. Dr. Vyas stated the pipe was 15' from the rear property line. Mrs. Wall also inquired how far the pool was going to be from the storm sewer. Dr. Vyas stated approximately 10'. Mrs. Wall asked if Dr. Vyas knew if there were any plans to develop the cornfield behind their lot. Dr. Vyas stated that the neighbor had signed a letter of support for the project. Dr. Vyas also stated that the cornfield was in trust and that there were no plans for selling at this point.

Mr. Spring stated that there was an existing 10' easement at the rear of the property and that the storm water pipe was beyond that and that the addition would not be placed in the easement.

Mrs. Wall asked if the 50' easement remained on the properties next to the Vyas'. Mr. Spring stated that was correct. Mr. Hoying stated that all of the houses had the 50' easement which meant there was no room to do anything in their backyards. Dr. Vyas stated that is why they had vacated the easement so that they could utilize their property.

Mrs. Wall asked if there were any surrounding neighbors that had an in-ground pool or structures in their backyards. Dr. Vyas said no because of the easement.

Mrs. Wall inquired if Mr. Spring had any history as to why there was a 50' easement. Mr. Spring stated that he did not have any specific background on it all. Mr. Spring wanted to make it clear to the Board that the City Engineer and the Utilities Department was very much aware of this project and have completely signed off on its validity and its applicability and within the confines of the easement.

Mr. Borchers inquired about the property behind the area if it were to be developed. Mr. Spring stated that the pipe itself was



completely on the applicant's property and was 15' feet away from the property line, and the easement did not encroach into the rear property. Mr. Spring said that it was a moot point and had no affect on the property what so ever.

Chairman Poff asked what if the property was developed and they needed to tie into the pipe. Mr. Spring stated that there was an easement that theoretically it was a possibility that they could tie into the pipe but there was other steps that would have to happen before they could tie in. Dr. Vyas stated that the pipe that he moved was for the surface water of Copperfield Lane, and that there was a larger pipe that drains to Peters Road so if there was a subdivision that was built in that area they would either tie into that much larger pipe, or have a separate pipe going to a separate detention pond of that subdivision.

Mr. Borchers asked if there were any sump-pumps tied into the pipe. Dr. Vyas stated yes, that his was reconnected to it and his neighbors. Chairman Poff inquired if that code was changed and that sump pumps were not allowed to be tied into the storm drain and that it had to go into the sanitary. Mr. Spring stated no, because essentially you are running rain water through the sump pump.

Chairman Poff asked the applicant if he had hired Bruns Construction to do the piping, and if they had talked to him about contacting the City for the permits before the work was completed. Dr. Vyas stated yes, and had thought that he was under the impression that Bruns Construction was in the process of doing all of that and when the easement was vacated to Bruns it was the hardest part because of the multiple engineering drawings, and surveys done. All the City Departments had to acquire copies for approval and certified by a professional engineer and it was a huge process. Then going to the Planning Board, and during the whole process he thought it was fairly clear that he was going to build an addition and he thought that Bruns had taken care of it. So Dr. Vyas was under the impression that everything was taken care of only to find out that did not occur.

Mr. Spring stated that there had never been any type of breach of the permitting protocol what so ever. The order in which the project was completed put the applicants in the position where they have spent a lot of money but they hadn't got the variance that was required yet. Mr. Spring wanted to reiterate to the Board that they did not breach any code or permitting protocol. Dr. Vyas wanted to clarify what happened and stated that Bruns was hired to do both aspects of the job, vacate the easement and move the pipe, and to give him a contract to build the addition. Dr. Vyas stated that Bruns did move the pipe, then he found out

they did not get the variance to build the addition. Mr. Poff asked what happened between then and now. Dr. Vyas stated that Mr. Hoying was now working for Dr. Vyas because Dr. Vyas thought Bruns was going to do both stages of the project and therefore assumed that everything was in order and that was what he had asked them to do. Dr. Vyas stated he was not an engineer or a City Planner; he is a physician so he said that he wanted to build a swimming pool and to please figure out how to do that. Dr. Vyas did find out that there was a zoning and a setback issue but he turned it over to Bruns to handle it and thought that it was taken care of.

Mr. Berrett inquired about neighbor's comments.

Mrs. Wall moved to accept the letter into the record as part of case no. 06-09. Mrs. Wall read the letter that stated the following: **"We have talked with our adjacent neighbors and those directly behind us, as well as presented our ideas to Mr. Matt Spring the City Planner. Below please find a letter of support from our neighbors. As the neighbors, Bill and Mary Baugh, Jamie and Meg Watkins, and Maxine Loring, of 1021 Copperfield Lane we support the home improvement project proposed b Darshan and Asha Vyas. We understand this will be an addition to their home, constructed to house an indoor swimming pool"**, seconded by Mr. Borchers. **Motion carried.** Ayes. Wall, Borchers, Poff, Black, and Berrett. Nays. None.

Mrs. Wall stated that her concern was that the original 50' easement was placed at 50' for a reason and now there was one lot that is now at 10'. She noted that the City Engineer had approved the plan but still was concerned because the original easement had to of been placed at 50' for a reason and was not comfortable allowing the addition in that area even though the pipe had been moved. Mr. Spring stated that it was clear that the original pipe was a significant distance into the rear yard. Mrs. Wall stated it was like that for all of the lots. Mr. Spring stated that it was placed there to catch storm water drainage and there were catch basins all along the route of the pipe. New catch basins had been installed and the land had been regarded to continue to capture the storm water. Mr. Spring said again that the City Engineer had approved the plan as well as the utilities department reviewed it with no comments. Mr. Spring also stated that. Mr. Hoying stated that it the entire plat was unable to utilize their backyards due to the 50' easement and they too would have to apply for a variance if they wanted to use their backyards for anything.

Chairman Poff stated that it looked like the Planning Board had to approve the plan for the plat. Mr. Spring stated that was correct.

Chairman Poff would ask why would the Planning Board approve the drainage pipe so deep into the properties to make a burden on the rest of the homeowners, because it could have been moved out farther. Mr. Spring stated that it was designed by the engineer of the subdivision and it was not unheard of to have large drainage easements. Mr. Spring stated that the Planning Board simply accepts a plan that is presented before them. Chairman Poff asked if the Planning Board takes into consideration of the future homeowners. Mr. Spring stated that yes they do consider the homeowners and each homeowner should do due diligence when purchasing.

Ms. Black stated that most citizens don't think about easements until after they purchase the property and do not have a say in what the Planning Board approved. Ms. Black said that it was unfair to punish the property owners. Ms. Black also stated that if the engineers approved it and everything was working properly than she did not have a problem with it.

Chairman Poff stated that there was still a problem for the other home owners to either side of the applicant and if they wanted to do anything they would have to go through the same process and move the pipe.

Mr. Berrett stated that yes, they would have to go through the same process and that they purchased the houses whether or not they know about the easement. Mr. Berrett also stated that the easement was there when they purchased the property or when they built the house. Obviously this home was built exactly to the easement because it was only a 1.5' away. Mr. Berrett also mentioned that there wasn't going to be any enlargement of Copperfield, his concern was if there was any plan to build a road on the other side. He understood that the land was in trust and currently there was no plan to develop but at that point it would be another developer's responsibility to take care of any runoff. The situation that the Board was looking at was whether or not to allow the applicant to do what he wants with his property and the Board cannot go back and redesign the subdivision. Mr. Poff said that questions arise when the case came to light. Mr. Berrett said that he agreed with Chairman Poff but mentioned that he didn't see to where the questions were pertinent to the point of discussion and perhaps should be something to pass on to the Planning Board for their review for when they look at subdivisions. Chairman Poff stated that as a Board as a whole questions are brought up so they could be presented to the City so that they could forward to the Planning Board because the case came up. Mr. Berrett stated he did not disagree with that.

Mrs. Wall asked that when the City Engineer approves the plans if



the engineer takes into consideration the issue as to if it is detrimental to the public health, safety, convenience and the general welfare of the surrounding properties. Mr. Spring stated that if she was specifically speaking of storm water that the answer would be absolutely and that the engineer had a hand in how the whole thing was designed. Mr. Spring also stated that the City Engineer would not have approved the design unless it did what it needed to do with the storm water and is unwilling for it to impact this property or any other property in any negative way and it has to meet the standards required by the EPA and Federal Government.

Chairman Poff asked for further discussion. There was none. Mr. Berrett **moved to grant a variance of 24' to the required rear yard setback of 50' noted in Code §154.041(C)(2)(b) in conjunction with the construction of an addition to the single family dwelling located at 1021 Copperfield Lane**, seconded by Ms. Black. Motion carried. Ayes. Berrett, Black, Wall, Borchers, and Poff. Nays. None.

**Old Business**

There was none.

**Miscellaneous**

Chairman Poff would like to see all Board Members wear their matching shirts to the next meeting.

**Adjournment**

There being no further business, Mrs. Wall **moved to adjourn the meeting**, seconded by Mr. Berrett and unanimously approved. **Motion carried.** Chairman Poff declared the meeting adjourned at 8:08 p.m.

Stacy M. Wall  
Board Chairman

Attest:

Kimberly W. Patterson  
Mrs. Kimberly Patterson, Board Secretary

